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PROTECTION OF MINORITIES

Written statement submitted by International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 August 1992]

1. In 1950 the secretariat of the United Nations Commission on Human Rights produced the remarkable and widely quoted "Study of the legal validity of the undertakings concerning minorities" (E/CN.4/367). Something fundamental to the Sub-Commission's work and its present preoccupations seems to have gone unnoticed for almost half a century, and that is that corresponding corrective measures may contribute to resolve some current problems concerning the effective protection of endangered populations and the strengthening of the rule of law.

2. The 1950 study's much-quoted general conclusion seems to be at the heart of a widely shared, important misunderstanding. It concerns the continued validity of the minority protection clauses contained notably in those international agreements and declarations made between the First and the Second World Wars in favour of peoples not affected by the peace treaties which ended the latter. They can be seen to be of direct relevance to the

victims of the infamous ethnic cleansing and relocation campaigns which have been conducted under the direction of the Presidents of the former Yugoslavia and of Iraq, respectively. We are referring to the inhabitants of Bosnia and Herzegovina and about Iraq's so-called "un-Iraqi" Assyrians, Kurds, Turkomans and Shiites.

3. Received wisdom holds that the wide-ranging formal protection enjoyed by these peoples under the League of Nations minority protection system has not survived the dissolution of the League in 1946. Yet, the 1950 study of the United Nations Commission on Human Rights suggests otherwise in its lesser-known but no less relevant case-by-case section. Concerning Yugoslavia, the protection regime laid down by the Treaty of Versailles of 1919 is thus said to be gone only "as regards the minorities which assisted Yugoslavia's enemies" (p. 65). Accordingly, the League of Nations' individual-oriented protection and redress system may be activated in the actual case of Bosnia and Herzegovina, should its authorities or other imaginative diplomats or concerned citizens be interested. And in the equally current case of Iraq, the authors of the United Nations study on page 51, expressed the view that "the dissolution of the League of Nations did not annul but merely 'suspended' Iraq's all-important and even constitutive Iraqi Declaration of 30 May 1932 with its wide-ranging minority protection and other 'obligations of international concern'".

4. In fact, this so-called suspension of solemnly undertaken obligations in favour of minorities has been less a matter of international law than it has been an ill-founded, opportunistic practice. For the United Nations General Assembly, on 12 February 1946, unanimously adopted the resolutions proposed by its League of Nations Committee. Its resolution 24 (I), section I, paragraph 1 specifies that:

> "The General Assembly reserves the right to decide, after due examination, not to assume any particular function or power, and to determine which organ of the United Nations or which specialized agency brought into relationship with the United Nations should exercise each particular function or power assumed."

5. Iraq, of course, was never relieved of its 1932 obligations; Iraq's territorial integrity, independence and sovereignty are thus subject to review by the United Nations General Assembly. Accordingly, the Sub-Commission may find it useful to look more closely at the substance of these readily and individually invokable obligations. Concretely, it may want to consider ways and means for the peoples concerned to obtain prompt and effective application of these conveniently forgotten yet valid national and international guarantees. The suggestion of human rights monitors, made by the Special Rapporteur on Iraq (E/CN.4/1992/31; S/24386), might be developed further for registering both related human rights violations and the individuals who took part in same - for later prosecution. The beneficiaries of former League of Nations guarantees might be helped by special representatives communicating directly with the Security Council for it to take prompt and adequate corrective measures.

6. The text of the 1932 Declaration of the Kingdom of Iraq follows:

DECLARATION OF THE KINGDOM OF IRAQ, MADE AT BAGHDAD ON 30 MAY 1932, ON THE OCCASION OF THE TERMINATION OF THE MANDATORY REGIME IN IRAQ, AND CONTAINING THE GUARANTEES GIVEN TO THE COUNCIL BY THE IRAQI GOVERNMENT

Article 1 Protection of Minorities

The stipulations in the present chapter are recognized as fundamental laws of Iraq, and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action now or in the future prevail over them.

Article 2

1. Full and complete protection of life and liberty will be assured to all inhabitants of Iraq without distinction of birth, nationality, language, race or religion.

2. All inhabitants of Iraq will be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

...

Article 4

1. All Iraqi nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

2. The electoral system shall guarantee equitable representation to racial, religious and linguistic minorities in Iraq.

3. Differences of race, language or religion shall not prejudice any Iraqi national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions or industries.

4. No restriction will be imposed on the free use by any Iraqi national of any language, in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

5. Notwithstanding the establishment by the Iraqi Government of Arabic as the official language, and notwithstanding the special arrangements to be made by the Iraqi Government, under Article 9 of the present Declaration, regarding the use of the Kurdish and Turkish languages, adequate facilities will be given to all Iraqi nationals whose mother tongue is not the official language, for the use of their language, either orally or in writing, before the courts.

Article 5

Iraqi nationals who belong to racial, religious or linguistic minorities will enjoy the same treatment and security in law and in fact as other Iraqi nationals. In particular, they shall have an equal right to maintain, manage and control at their own expense, or to establish in the future, charitable, religious and social institutions, schools and other educational establishment, with the right to use their own language and to exercise their religion freely therein.

Article 6

The Iraqi Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law and personal status, measures permitting the settlement of these questions in accordance with the customs and usage of the communities to which those minorities belong. The Iraqi Government will communicate to the Council of the League of Nations information regarding the manner in which these measures have been executed.

...

Article 9

1. Iraq undertakes that in the liwas of Mosul, Arbil, Kirkuk and Sulaimaniya, the official language, side by side with Arabic, shall be Kurdish in the qadhas in which the population is predominantly of Kurdish race. In the qadhas of Kifri and Kirkuk, however, in the liwa of Kirkuk, where a considerable part of the population is of Turcoman race, the official language, side by side with Arabic, shall be either Kurdish or Turkish.

2. Iraq undertakes that in the said qadhas the officials shall, subject to justifiable exceptions, have a competent knowledge of Kurdish or Turkish as the case may be.

3. Although in these qadhas the criterion for the choice of officials will be, as in the rest of Iraq, efficiency and knowledge of the language, rather than race, Iraq undertakes that the officials shall, as hitherto, be selected, so far as possible, from among Iraqis from one or other of these qadhas.

Article 10

The stipulations of the foregoing articles of this Declaration, so far as they affect persons belonging to racial, religious or linguistic minorities, are declared to constitute obligations of international concern and will be placed under the guarantee of the League of Nations. No modification will be made in them without the assent of a majority of the Council of the League of Nations.

Any Member of the League represented on the Council shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these stipulations, and the Council may thereupon take such measures and give such directions as it may deem proper and effective in the circumstances.

Any difference of opinion as to the questions of law or fact arising out of these articles between Iraq and any Member of the League represented on the Council shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. Any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

...

Article 13 International Conventions

Iraq considers itself bound by all the international agreements and conventions, both general and special, to which it has become a party, whether by its own action or by that of the Mandatory Power acting on its behalf. Subject to any right of denunciation provided for therein, such agreements and conventions shall be respected by Iraq throughout the period for which they were concluded.

Article 14 Acquired Rights and Financial Obligations

Iraq, taking note of the resolution of the Council of the League of Nations of 15 September 1925:

1. Declares that all rights of whatever nature acquired before the termination of the mandatory regime by individuals, associations or judicial persons shall be respected.

2. Undertakes to respect and fulfil all financial obligations of whatever nature assumed on Iraq's behalf by the Mandatory Power during the period of the Mandate.

Article 15 Freedom of Conscience

Subject to such measures as may be essential for the maintenance of public order and morality, Iraq undertakes to ensure and guarantee throughout its territory freedom of conscience and worship and the free exercise of the religious, educational and medical activities of religious missions of all denominations, whatever the nationality of those missions or of their members.

Article 16 Final Clause

The provisions of the present chapter constitute obligations of international concern. Any Member of the League of Nations may call the attention of the Council to any infraction of these provisions. They may not be modified except by agreement between Iraq and the Council of the League of Nations acting by a majority vote.

Any difference of opinion which may arise between Iraq and any Member of the League of Nations represented on the Council, with regard to the interpretation of the execution of the said provisions, shall, by an application by such Member, be submitted for decision to the Permanent Court of International Justice.

The undersigned, duly authorized, accepts on behalf of Iraq, subject to ratification, the above provisions, being the declaration provided for by the resolution of the Council of the League of Nations of 19 May 1932.

DONE at Baghdad on this thirtieth day of May 1932

in a single copy which shall be deposited in the archives of the Secretariat of the League of Nations.

(Signed) NOURY SA'ID
Prime Minister of Iraq